

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LOCALS 302 AND 612 OF THE	)	
INTERNATIONAL ENGINEERS	)	CASE NO. C13-0170-MAT
CONSTRUCTION INDUSTRY HEALTH	)	
AND SECURITY FUND, et al.,	)	
	)	
Plaintiffs,	)	
	)	ORDER GRANTING
v.	)	PLAINTIFFS' MOTION FOR
	)	SUMMARY JUDGMENT
TREPUS CORPORATION,	)	
	)	
Defendant.	)	
_____	)	

INTRODUCTION

Plaintiffs move the Court for summary judgment against defendant Trepus Corporation (Dkt. 10) in this matter brought pursuant to the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* (ERISA). Defendant did not oppose plaintiffs' motion. The Court deems defendant's failure to oppose to be an admission that the motion has merit. *See* Local Civil Rule 7(b)(2). The Court also, for the reasons described below, finds plaintiffs entitled to summary judgment.

01 BACKGROUND

02 Plaintiffs include three trust funds and a local union: (1) Locals 302 and 612 of the  
03 International Union of Operating Engineers Construction Industry Health and Security Fund;  
04 (2) Locals 302 and 612 of the International Union of Operating Engineers-Employers  
05 Construction Industry Retirement Fund; (3) the Western Washington Operating Engineers-  
06 Employers Training Trust Fund; and (4) Local 302 of the International Union of Operating  
07 Engineers. Defendant employs members of a bargaining unit represented by IUOE Local 302  
08 (“Local 302). (Dkt. 11, ¶9.) Local 302 is an employee organization within the meaning of  
09 ERISA.

10 Defendant is bound by the Associated General Contractors (AGC) master labor  
11 agreement with Local 302 of the International Union of Operating Engineers, requiring it to  
12 report and pay monthly contributions to plaintiff Trust Funds at specified rates for eligible  
13 employees. (*Id.*, ¶11, Ex. E at Schedule B.) Defendant is also bound to three Trust  
14 Agreements with the Trust Funds. (*Id.*, ¶2, Exs. A-D.) The Trust Funds provide medical,  
15 retirement, and training benefits to eligible participants. (*Id.*, ¶6.)

16 A primary function of the Trust Funds is to perform audits on participating employers.  
17 (*Id.*, ¶7.) The audits help to ensure employers’ compliance with reporting and contributions,  
18 and the proper funding of the Trust Funds. (*Id.*, ¶12.) The Trust Agreements require  
19 defendant to submit to audits of its payroll records. (*Id.*, ¶8, Ex. A, Article IV § 17, Ex. B,  
20 Article IV § 17, and Ex. C, Article IV § 11.) The audit process entails the review of  
21 defendant’s payroll records, information, data, reports, and other documents. (*See id.*)

22 The Trustees of the Trust Funds deemed it both necessary and advisable to examine

01 defendant's books and records for the period of January 1, 2009 through the present date in  
02 order to determine whether defendant has reported and paid all amounts due for eligible  
03 employees. (*Id.*, ¶16.) In a letter dated August 21, 2012, auditors sent defendant a letter  
04 requesting access to documents to perform an audit. (*Id.*, ¶13, Ex. F.) An appointment to  
05 conduct the audit was scheduled, but later canceled. (*Id.*, ¶13.) On or around January 14,  
06 2013, defendant notified the auditors it would not be providing access to its records for an audit.  
07 (*Id.*) Counsel for the Trust Funds, in a letter dated January 17, 2013, again requested  
08 arrangements be made to conduct the audit. (*Id.*, ¶14, Ex. G.) Defendant did not respond to  
09 the request. (*Id.*, ¶14.)

#### 10 DISCUSSION

11 Summary judgment is appropriate when a "movant shows that there is no genuine  
12 dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.  
13 R. Civ. P. 56(a). The moving party is entitled to judgment as a matter of law when the  
14 nonmoving party fails to make a sufficient showing on an essential element of his case with  
15 respect to which he has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23  
16 (1986). The Court must draw all reasonable inferences in favor of the nonmoving party.  
17 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

18 This case proceeds pursuant to ERISA. ERISA obligates participating employers to  
19 make contributions to a multi-employer trust fund in accordance with the contract and trust  
20 agreement. ERISA Section 515, 29 U.S.C. § 1145. "The [United States] Supreme Court has  
21 made clear that the trust documents, if consistent with the ERISA statute, govern the scope of  
22 the trustees' rights and duties." *Santa Monica Culinary Welfare Fund v. Miramar Hotel*

01 *Corp.*, 920 F.2d 1491, 1494 (9th Cir. 1990) (citing *Cent. States, SE and SW Areas Pension Fund*  
02 *v. Central Transp., Inc.*, 472 U.S. 559, 568 (1985)).

03 It is further well established that a trust fund has the right to conduct audits to ensure  
04 proper funding. *See generally Cent. States, SE and SW Areas Pension Fund*, 472 U.S. 559.  
05 In fact, under common law and ERISA, trust funds are obligated to ensure proper funded. *Id.*  
06 at 569-73, 80. Where a trust agreement grants a trust fund the right to conduct an audit, an  
07 employer “cannot receive the benefits of the Fund yet escape its attendant burdens,” including  
08 “the provision of the Trust Agreement permitting the Trustees to audit an employer’s books and  
09 records.” *Santa Monica Culinary Welfare Fund*, 920 F.2d at 1493.

10 In this case, it is undisputed defendant signed the compliance agreement binding it to  
11 the Trust Agreements. (Dkt. 11, ¶2, Ex. D.) It is further clear that the Trust Agreements  
12 require defendant to submit to audits of its records:

13 . . . The Board may require the Employers . . . to promptly furnish to the  
14 Trustees, on demand, such payroll records, information, data, reports or  
15 documents reasonably required for the purposes of administration of the Fund.  
16 The parties agree that they will use their best efforts to secure compliance with  
17 any reasonable request of the Board for any such information, data, reports or  
18 documents. The Trustees, or their authorized representatives, may examine the  
19 pertinent payroll records of each Individual Employer with respect to the  
20 Employees benefiting from this Agreement whenever such examination is  
21 deemed necessary or advisable by the Trustees in connection with the proper  
22 administration of the Fund.

In the event that any such audit shall determine that the Individual  
Employer is delinquent in the payment of contributions due the Fund, the  
Individual Employer shall be obligated for the cost of such audit; provided,  
however, that the Board of Trustees may waive the imposition of such costs  
upon good cause shown.

(*Id.*, Ex. A, Article IV § 17; *accord id.*, Ex. B, Article IV § 17 and Ex. C, Article IV § 11

(containing same or similar language).)

Plaintiffs here attest they deem an audit of defendant's records necessary and advisable in the administration of the Trust Funds. (*Id.*, ¶16.) They demonstrate they requested review of defendant's records to conduct an audit, and attest that defendant refused to comply with their requests. (*Id.*, ¶¶ 13-16, Exs. F-G.) In failing to respond to the current motion, defendant does not deny its obligation to submit to the audit, or dispute its failure to comply.

The Court finds no issues of fact regarding either the enforceability of the compliance and trust agreements, or plaintiffs' entitlement to conduct an audit. Accordingly, the Court finds plaintiffs entitled to summary judgment. Defendant is required to provide access to its records for its employees in order to allow for an audit for the period of January 1, 2009 through the present date.

#### CONCLUSION

Plaintiffs' motion for summary judgment (Dkt. 10) is GRANTED. Defendant is hereby ORDERED to provide the Trust Funds – within **two (2) weeks** of the date of this Order – the following documents for the time period of January 1, 2009 through the present date:

- (1) Collective bargaining agreements and subscriber's agreements, for the entire testing period, covering the employees who are reported to the Trust Funds.
- (2) Payroll register or other documents which show wages paid and hours worked by month (preferably) or week.
- (3) Washington tax and wage reports (EMS 5208).
- (4) Monthly hours summaries or other documents used to facilitate accurate reporting to the Trust Funds.
- (5) Time cards for the most recent full quarter of the current year.

01 (6) Monthly transmittals to the Trust Funds showing the names reported for  
02 benefits.

03 (7) Monthly transmittals to other Trust Funds.

04 (8) Detailed documentation of the job classifications of employees NOT  
05 reported to the Trust Funds.

06 (9) Cash disbursement journals or check registers.

07 The Court further ORDERS that defendant give the authorized representatives of the Trustees  
08 of the Trust Funds both ample time and opportunity to examine all such materials, without  
09 harassment, at such time and at such place as shall be convenient to the Trustees' authorized  
10 representatives. The Court will also consider a motion for attorney's fees and costs associated  
11 with plaintiffs' efforts in this lawsuit upon submission of a properly supported motion.

12 DATED this 28th day of August, 2013.

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14 Mary Alice Theiler  
15 Chief United States Magistrate Judge  
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